

MT LEGISLATIVE HISTORY

Chapter 122 19 87

Bill (H) 440 S _____

Original bill & hist. ☒ C

H. Committee on Business & Labor

S. Committee on Business & Industry

Hearing Date(s) FEB 4 ☒ C

Hearing Date(s) MAR 3 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

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_____ ☐ C

Date Out FEB 4 ☒ C

MAR 3 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

HOUSE BILL NO. 440

INTRODUCED BY GRADY, MILES, PINSONEAULT

BY REQUEST OF THE STATE AUDITOR

IN THE HOUSE

JANUARY 24, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & LABOR.
FEBRUARY 4, 1987	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 5, 1987	PRINTING REPORT.
FEBRUARY 6, 1987	SECOND READING, DO PASS.
FEBRUARY 7, 1987	ENGROSSING REPORT.
	THIRD READING, PASSED.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 10, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
MARCH 4, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 6, 1987	SECOND READING, CONCURRED IN.
MARCH 9, 1987	THIRD READING, CONCURRED IN. AYES, 50; NOES, 0.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 10, 1987	RECEIVED FROM SENATE.
	SENT TO ENROLLING.

1 House BILL NO. 440
2 INTRODUCED BY Dwight Miles
3 BY REQUEST OF THE STATE AUDITOR

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE
6 COMMISSIONER OF INSURANCE TO DISAPPROVE A CASUALTY INSURANCE
7 FORM IF THE FORM CONTAINS A PROVISION PERMITTING DEFENSE
8 COSTS WITHIN LIMITS; AUTHORIZING THE COMMISSIONER OF
9 INSURANCE, IN HIS DISCRETION, TO PERMIT DEFENSE COSTS WITHIN
10 LIMITS; AND AMENDING SECTION 33-1-502, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 33-1-502, MCA, is amended to read:

14 "33-1-502. Grounds for disapproval. The commissioner
15 shall disapprove any form filed under 33-1-501 or withdraw
16 any previous approval thereof only if the form:

17 (1) is in any respect in violation of or does not
18 comply with this code;

19 (2) contains or incorporates by reference, where such
20 incorporation is otherwise permissible, any inconsistent,
21 ambiguous, or misleading clauses or exceptions and
22 conditions which deceptively affect the risk purported to be
23 assumed in the general coverage of the contract, including
24 a provision in a casualty insurance form permitting defense
25 costs within limits, except as permitted by the commissioner

1 in his discretion;

2 (3) has any title, heading, or other indication of its
3 provisions which is misleading;

4 (4) is printed or otherwise reproduced in such manner
5 as to render any provision of the form substantially
6 illegible."

7 NEW SECTION. Section 2. Extension of authority. Any
8 existing authority of the commissioner of insurance to make
9 rules on the subject of the provisions of this act is
10 extended to the provisions of this act.

-End-

STATUS SHEET

50th LEGISLATIVE SESSION

BUSINESS AND LABOR

COMMITTEE

HOUSE BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NOT CONCURREN IN AS AMENDED DATE
439	1/24/87	2/4/87	2/4/87			2/4/87					
440	1/24/87	2/4/87	2/4/87	2/4/87							
441	1/24/87	2/4/87	2/4/87	2/4/87							
443	1/24/87	2/5/87	2/10/87			2/10/87					
449	1/27/87	2/17/87	2/17/87			2/17/87					
466	1/27/87	2/18/87	2/18/87	2/18/87							
471	1/27/87	1/30/87	2/9/87			2/9/87					
473	1/27/87	2/10/87	2/9/87	2/9/87							
475	1/27/87	2/10/87	2/14 referred to Judiciary								
476	1/29/87	2/10/87	2/11/87			2/11/87					
487	1/30/87	2/10/87	2/11/87	2/11/87							
488	1/30/87	2/11/87	2/11/87			2/11/87					
497	1/30/87	2/11/87	2/11/87				2/11/87				

CLOSING

Rep. Sands made no further comments.

HOUSE BILL NO. 440 - Disapprove Insurance Policy With "Defense Costs Within Limits" Provisions, sponsored by Rep. Edward Grady, House District No. 47, Helena. Rep. Grady stated this is a "defense costs within limits" piece of legislation, and that Tanya Ask would address the bill.

PROPONENTS

Tanya Ask, Montana Insurance Department, State Auditor's Office. Ms. Ask stated that defense costs within limits is the concept that has come up because of the insurance industry's attempt to implement a new commercial general liability program. She said that under defense within limits, it becomes a cost transference to the consumer, and is something that is not supported by the majority of Insurance Commissioners in the U.S., and the State Auditor's office would not want defense costs within limits for the protection of policy holders in this state. Exhibit No. 26.

Roger McGlenn, Executive Director, Independent Insurance Agents Association of Montana. Mr. McGlenn stated that they support the bill, and agree with the need to contain the explosion of defense costs, however, the National Association and Commercial Lines Committee, on which there is a representative from Montana, rejects the concepts of defense costs being included with the limits of coverage in a liability policy. They believe defense costs within policy limits is not in the consumer's best interest, and would reduce indemnity coverages available by reducing the policy limits by the cost of defense; and in a complex claim, policy limits could be exhausted in defense costs, and other legal costs with no indemnity protection left over after the litigation, and thereby no coverage for the consumer.

OPPONENTS

None.

QUESTIONS

Rep. Driscoll stated that we have been hearing for two years about claims and attorneys causing all the problems with the insurance industry, and it seemed to him that maybe the defense attorneys are the ones causing the problems. Ms. Ask responded that may be a problem, but they want to make sure that if there is a defense cost, that the consumer

would not be out the protection that he purchased coverage for.

CLOSING

Rep. Grady made no further comments.

HOUSE BILL NO. 441 - Pro Rata Cancellation of Financed Insurance Policy, sponsored by Rep. Edward Grady, House District No. 47, Helena. Rep. Grady stated this bill address prorated cancellation of a financed insurance contract, and that Tanya Ask would address this bill.

PROPONENTS

Tanya Ask, Montana Insurance Department. Ms. Ask stated that this bill deals with pro-rata cancellation of a finance contract. She pointed out that frequently in purchasing commercial liability coverage, especially for smaller business, the premium is a huge portion of a business budget, and a lot of times those smaller businesses do premium finance for a loan to pay their insurance premium. She said this bill provides that any cancellation of that insurance for non-payment of the premium by the individual, which would be a payment to the premium finance company, is done on a pro rata basis so the insured only pays for the coverage that was actually received. Exhibit No. 27.

Linda Dry, representing the Montana Premium Finance Industry. Ms. Dry stated that they serve the average insured persons who do not have the cash flow to pay their gross premium in one lump sum. She said they advance the premium to the insured who pays the loan on an installment basis. She commented that premium financing benefits the insurance companies; they get their money so they can invest it, and don't have the expenses invoicing it out. She stated if the insurance company does invoice out on an installment basis and cancels for nonpay, they do it on a pro-rata cancellation, and the Premium Finance Industry gives the same treatment as the company.

OPPONENTS

Randy Gray, representing the State Farm Insurance Company and the National Association of Independent Insurers. Mr. Gray stated that he does not classify himself as an opponent; but has an amendment that he is proposing. He said the purpose of this amendment is to provide that a company may refund a premium on other than a pro-rata basis up through the initial term of the contract, and once an insurance contract has reached its initial term, if a person wishes to cancel their insurance, then they would be

protection for its consumers and make a united effort to weed out undesirable elements of the insurance profession, she said, this legislation is necessary. She added that allegations of serious violations can not be adequately investigated and residents of this state can not obtain the information they may need to make business decisions without the benefit of this bill.

Randy Gray, representing State Farm Insurance Company, and NAI, and by proxy for Glen Drake on behalf of AIA. They all support this bill strongly and believe that this bill is critical to allowing the Commissioner to accomplish her responsibilities and in insuring that the consumers of insurance services aren't being taken advantage of in Montana.

Bonnie Tippy, Alliance of American Insurers. Ms. Tippy stated that they support this bill.

Rep. Les Kitselman, House District No. 95, Billings. Rep. Kitselman stated that he supports this bill.

OPPONENTS

None.

QUESTIONS

None.

CLOSING

Rep. Grady made no further comments.

EXECUTIVE ACTION - February 4, 1987 - 10:15 a.m.

ACTION ON HOUSE BILL NO. 414

Rep. Pavlovich moved that House Bill No. 414 DO PASS. The motion carried with Rep. Cohen being absent.

ACTION ON HOUSE BILL NO. 441

Rep. Thomas moved that House Bill No. 441 DO PASS. The motion carried with Rep. Cohen being absent.

ACTION ON HOUSE BILL NO. 440

Rep. Thomas moved that House Bill No. 440 DO PASS. The motion carried with Rep. Cohen being absent.

DAILY ROLL CALL

BUSINESS & LABOR

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date February 4, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. LES KITSELMAN, CHAIRMAN	✓		
REP. FRED THOMAS, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. RAY BRANDEWIE	✓		
REP. JAN BROWN	✓		
REP. BEN COHEN	✓		
REP. JERRY DRISCOLL	✓		
REP. WILLIAM GLASER	✓		
REP. LARRY GRINDE	✓		
REP. STELLA JEAN HANSEN	✓		
REP. TOM JONES	✓		
REP. LLOYD MCCORMICK	✓		
REP. GERALD NISBET	✓		
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON	✓		
REP. CLYDE SMITH	✓		
REP. CHARLES SWYSGOOD	✓		
REP. NORM WALLIN	✓		

(absent for part of hearing)

STANDING COMMITTEE REPORT

February 4

19 87

Mr. Speaker: We, the committee on BUSINESS AND LABOR

report HOUSE BILL NO. 440

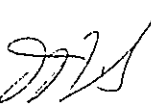
☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. LES KITSELMAN

Chairman


FIRST

reading copy (WHITE)
color

TESTIMONY

House Bill 440

Presented by Tanya M. Ask
Montana Insurance Department

We support this bill and oppose the general use of "defense cost within policy limits" provisions since they are not in the best interest of the general commercial insurance buying consumer. When an insured purchases liability policy limits, he or she purchases that much insurance protection. If my business purchases liability protection in the amount of \$1 million dollars, and a valid claim is entered against me which amounts to \$1 million dollars, that claim would now be paid. If my policy includes defense within limits and the cost of the defense was \$250,000, the \$250,000 would apply towards my policy limits leaving a balance of \$750,000 in the policy for claim payment.

There are certain lines where coverage simply does not exist. At that point it may be necessary to allow a contract with this provision to be offered simply so there is some insurance for the insurance buying public.

The general concept of defense costs within policy limits is one the industry through the Insurance Service Office has put forth for consideration by all insurance commissioners. The proposals have been rejected by those commissioners through their national association in December. This provision, which was to act as a cost containment mechanism, appears to instead become a cost transference to the insured.

Before such a transference should ever be considered, the insured must know he/she is accepting that additional burden. The insured must be allowed a reasonable degree of control in the defense of the case. The insured must also, through reduced premium, be able to share in the cost-containment.

COMMITTEE

DATE February 4, 1987

SPONSOR Rep. Edward J. Grady

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FOR
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

COMMITTEE--(S) BUSINESS & INDUSTRY

RUN DATE... 04/22/87

CHAIRMAN--SEN. ALLEN C. KOLSTAD
NORMAL SCHEDULE==> SITE: ROOM 410

DAYS: MON THRU FRI

TIME: 10:00 A.M.

SECRETARY--CAROLYN LINDEN

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0439 GRADY, ED	2/10	3/03	3/3/87; 3/5/87 CODIFYING LAWS ON RISK RETENTION GROUPS AND PURCHASING GROUPS	CONCUR AS AMENDED		3/5/87
HB0440 GRADY, ED	2/10	3/03	3/3/87 DISAPPROVE INSURANCE POLICY WITH "DEFENSE COSTS WITHIN LIMITS" PROVISION	CONCUR		3/3/87
HB0441 GRADY, ED	2/10	3/03	3/3/87 PRO RATA CANCELLATION OF FINANCED INSURANCE POLICY	CONCUR		3/3/87
HB0443 CORNE, DICK	2/16	3/11	3/11/87 REVISING LAWS RELATING TO PRACTICE AND LICENSURE OF PSYCHOLOGY	CONCUR		3/11/87
HB0449 MARKS, BOB	2/23	3/11	3/11/87; 3/17/87 INVESTING PART OF RETIREMENT FUNDS AND COAL TAX TRUST IN VENTURE CAPITAL	CONCUR		3/17/87
HB0466 BROWN, DAVE	3/02	3/20	3/20/87; 3/26/87 EXTEND VETERANS' AND HANDICAP PREFERENCE TO COLLEGES AND UNIVERSITIES	CONCUR AS AMENDED		3/26/87
HB0471 DARKO, PAULA	2/16				PUBLIC HEALTH PROVIDING FOR LICENSING AND REGULATION OF DIETITIANS AND NUTRITIONISTS	
HB0473 BRANDEWIE, RAY	2/13	3/13	3/13/87 LICENSE, REGULATE REAL ESTATE PROPERTY MANAGEMENT BROKERS	CONCUR		3/13/87
HB0476 GOULD, BUDD	2/16	3/05	3/5/87 CONFIDENTIALITY OF VIDEO DRAW POKER MACHINE INCOME STATISTICS	CONCUR		3/5/87
HB0487 THOMAS, FRED	2/16	3/17	3/17/87 INSURANCE CONSULTANTS' LICENSE	CONCUR		3/17/87
HB0488 RAMIREZ, JACK	2/16	3/20	3/20/87 EXTEND TERMINATION OF MEDICAL LIABILITY JOINT UNDERWRITING ASSOCIATION	CONCUR		3/20/87

In closing, Rep. Grady stated the bill is quite important and is being pushed by the securities people and he encouraged favorable consideration by the committee. He also requested that Sen. Thayer carry the bill in the Senate.

CONSIDERATION OF HOUSE BILL NO. 440: Rep. Ed Grady, District 47, sponsor of the bill, said it provides authority to the insurance commissioner to disapprove a casualty insurance form if it has a provision permitting the costs of defending a claim to be included in the coverage limits of the insurance contract. It would be left to the commissioner's discretion to determine if this kind of provision would be allowed (for example, if the insured is not able to obtain coverage in any other way). If an insurer is allowed to include defense costs within the limits of a contract, those costs may consume the coverage before the insured's claim has been satisfied.

PROPOSERS:

Tanya Ask, Montana Insurance Department, submitted written testimony, EXHIBIT 8, and went over it with the committee.

Roger McGlenn, Executive Director of the Independent Insurance Agents Association of Montana, said that through the processes of defending and litigation, the amount of coverage may be reduced by the amount spent on the defense cost and possibly exhausted by the process. It is also important to know the insurance company controlling that claim and the litigation on that claim, and said it is important that the legislature allow the insurance department's discretion to disapprove these forms.

OPPOSERS: There were none.

DISCUSSION OF HOUSE BILL NO. 440: Chairman Kolstad asked for questions from the committee members.

Sen. Boylan said the result of the bill would be increased premium rates to which Tanya agreed but felt it was a good bill.

Sen. Neuman clarified with Tanya that the insurance companies would just have to change the form.

The hearing was closed on House Bill 440.

EXECUTIVE ACTION ON HOUSE BILL NO. 440: Sen. Hager MOVED that HB 440 BE CONCURRED IN, seconded by Sen. Meyer. The MOTION PASSED UNANIMOUSLY.

Business & Industry COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 3/3/87

NAME	PRESENT	ABSENT	EXCUSED
ALLEN C. KOLSTAD, CHAIRMAN	✓		
TED NEUMAN, VICE CHAIRMAN	✓		
PAUL BOYLAN	✓		
TOM HAGER	✓		
HARRY H. McLANE			✓
DARRYL MEYER	✓		
GENE THAYER	✓		
MIKE WALKER			✓
CECIL WEEDING	✓		
BOB WILLIAMS	✓		

Each day attach to minutes.

3/3/87

Business & Industry

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

STANDING COMMITTEE REPORT

MARCH 3, 1957

MR. PRESIDENT

We, your committee on BUSINESS AND INDUSTRY

having had under consideration HOUSE BILL No. 440

THIRD reading copy (BLUE)
color

GRADY (PINSOHEAULT)

DISAPPROVE INSURANCE POLICY WITH "DEFENSE COSTS WITHIN
LIMITS" PROVISION

Respectfully report as follows: That HOUSE BILL No. 440

BE CONCURRED IN

XXXXX
DO PASS

XXXXXXXXXX
DO NOT PASS

Kolstad
SENATOR KOLSTAD, Chairman.